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IVEY et al. v. LEWIS et al.

June 15, 1922.

[112 S. E. 712.]

1. Equity (§ 243*)—Overruling Demurrer to Bill Is Adjudication of Right of Complainants to Have Relief Prayed for.—The overruling of a demurrer to a bill filed by contingent remaindermen to have set aside a previous decree for the sale of their interests in the property and the conveyances executed thereunder was an adjudication that the complainants were entitled to have the relief prayed for if the facts entitled them to it.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 503.]

2. Remainders (§ 17 (1*))—Object of Bill by Contingent Remaindermen Held to Be Preservation of Corpus of Estate.—Where a bill alleged that complainants had vested remainders in property conveyed to trustees but set out the marriage settlement creating the trust, from which it appeared their remainders were contingent, and prayed for the cancellation of proceedings for the sale of the property by the trustee under the marriage settlement and for the conveyances executed by virtue of such proceedings and subsequent thereto as a cloud on complainants' title, and also asked for an accounting by the purchasers under those proceedings, to which the contingent remaindermen were clearly not entitled during the life of the life tenant, the object of the bill was manifestly the preservation of the principal of the trust estate for the benefit of the remaindermen upon the happening of the contingency.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 127.]

3. Waste (§ 12*)—Contingent Remaindermen May Enjoin Waste.—Though contingent remaindermen cannot maintain an action at law to recover damages for waste committed upon the property in which they have an estate, they may maintain a suit in equity to enjoin a threatened waste which will impair the value of their remainders.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 669.]

4. Life Estates (§ 11*)—Contingent Remaindermen May Sue for Conservation of Principal.—Contingent remaindermen may, during the life of the life tenant, apply to a court of equity for the preservation and conservation of the whole of the principal of the estate which is threatened with loss by reason of the improper conduct of the life tenant.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 841.]

5. Remainders (§ 17 (3, 4*))—Contingent Remaindermen Not Chargeable with Laches for Failure to Sue to Protect Principal.—It is not necessary for a contingent remainderman to bring suit for protection of the principal of the estate which has been misappro-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

priated before his estate vests, and he will not be guilty of laches if he fails to do so; but if he brings such suit, as he may, in a court of general jurisdiction over the parties and subject-matter, and which was prosecuted to final decree, the decree thereby rendered is binding upon the contingent remainderman after his estate becomes vested.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 841.]

6. Equity (§ 431*)—Decree Construed with Pleadings Held Determinative of Validity of Prior Proceedings to Sell Contingent Interests.—

A former decree in a suit brought by contingent remaindermen to have canceled as a cloud on their title proceedings for the sale of the entire interest in the property including the contingent remainders, and the conveyances executed in accordance with such proceedings and subsequent thereto, which decree dismissed the suit on the ground that plaintiffs had failed to show any ground of relief against defendants, was, when construed with the pleadings, a determination of the validity of the prior proceedings for the sale of the contingent interests, and not merely a determination that the contingent remaindermen could not maintain a suit for that purpose, notwithstanding the fact that the brief in the prior suit showed that counsel argued the right of the contingent remaindermen to maintain the suit.

Sims. J., dissenting.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 137.]

Appeal from Law and Equity Court of City of Richmond.

Suit by Anna Ivey and others against John W. Lewis and others to recover possession of land, in which complaints had contingent remainders. From a decree dismissing the bill, complainants appeal. Affirmed.

Scott & Buchanan, of Richmond, for appellants.

Charles T. Lassiter, of Petersburg, and *Wm. Earle White*, of McKenny, for appellees.

HARRIS *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 753.]

1. Larceny (§ 55*)—Evidence Held Sufficient to Warrant Verdict Accused Aided Another in Stealing from a Bank.—Evidence that accused left a bank in company with one who had just stolen a sum of money therefrom, and that the two fled when they saw they were being pursued, together with the declarations of accused and his inconsistent testimony at the trial, held sufficient to show that accused and the other acted jointly in committing the crime.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 230.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.